



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

IRAN

IAA reference: IAA19/06654

Date and time of decision: 28 June 2019 10:39:00

R Mikhail, Reviewer

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of a referred applicant, or their relative or other dependant

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a citizen of Iran. On 2 February 2017 he lodged an application for a Safe Haven Enterprise Visa (application for protection). On 23 May 2019 a delegate of the Minister for Immigration (the delegate) refused the grant of the visa.

Information before the IAA

2. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act) (review material).
3. On 18 June 2019 the IAA received a submission and a number of documents on behalf of the applicant.
4. The seven-page submission refers, in part, to claims already raised by the applicant before the delegate, aspects of the delegate's decision and argument. I do not consider the above to be new information.
5. Attached to the above submission was a statutory declaration by the applicant dated 12 June 2019. I am satisfied that the information in the statutory declaration refers to claims already raised by the applicant and argument in response to the delegate's decision which I do not consider to be new information.
6. Also provided were two photos allegedly of the applicant's tattoos. The submission states that this is not new information as the delegate observed the tattoos during the interview "but did not keep any photos". I find this aspect of the submission unclear. Although it may be the case that the delegate observed the applicant's tattoos in person during the protection visa interview, I am not satisfied on the evidence before me that these photos were provided to the delegate and I am satisfied the photos of the applicant's tattoos are new information. During the protection visa interview the applicant discussed his tattoos which he claimed he obtained in Australia in 2015 and raised a fear of harm in Iran on the basis of his tattoos. As this claim was discussed with the delegate, I am not satisfied these photos could not have been provided to the Minister before the Minister made the decision. I accept that the photos are credible personal information which were not previously known to the Minister. During the protection visa interview the applicant described his tattoos to the delegate. In her decision, the delegate accepted that the applicant had tattoos but, having considered country information that was before her, found that the treatment he may receive from the Iranian authorities in regards to his tattoos did not amount to serious harm. The applicant has not satisfied me that the photos may have affected the consideration by the delegate of this aspect of his claims. I am not satisfied s.473DD(b) of the Act has been met. I am also not satisfied there are exceptional circumstances to justify considering this information.
7. Also provided were news reports which I find to be new information. The submission argues that the delegate rejected the applicant's need for health support in Iran by simply relying on general and out of date information. It argues the news reports should be considered under exceptional circumstances and this information could not have been provided to the delegate "until such time the delegate's obviousness misapplication and relying on, of the country's 'old and general health information' is known". Although somewhat unclear, this appears to suggest that these reports could not have been provided to the delegate because her reliance

on other country information only became known when she issued her decision. One report is an article by the Independent dated 23 August 2018. The article indicates that, as a result of the US sanctions against Iran, it has become harder to access imported medicines such as chemotherapy drugs. Another article is by the Washington Post dated 17 November 2018 which reports that sanctions on Iranian financial firms are endangering the flow of humanitarian goods including medicine. An article by CNN dated 22 February 2019 also reports that, due to the sanctions against Iran, its health sector is struggling to keep up with soaring prices of medications and medical instruments and medical companies have had to resort to paying intermediaries exorbitant sums to secure needed supplies. In the delegate's decision, in assessing whether the applicant would be able to access healthcare in Iran she relied on sources that were published in 2006 and 2009. Although the news reports provided by the applicant are more recent they refer to the impact that the US sanctions have had on the availability of imported medicines and medical instruments and do not refer to credible personal information. Although it may be the case the applicant was unaware of the country information the delegate sought to rely on until she made her decision, the applicant has not indicated what medicine he would not be able to access in Iran to treat his health issues as a result of the sanctions. He has only claimed to be taking medicine for relief of his nerve pain and has not claimed to be taking medication for his psychological issues or that he could not access mental health care in Iran because of the sanctions. I find the news reports to be of minimal relevance to the applicant's claims in relation to his mental and physical health issues. Having considered all the circumstances, I am not satisfied there are exceptional circumstances to justify considering these new reports.

Applicant's claims for protection

8. The applicant's claims can be summarised as follows:

- His [uncle] offered him an opportunity to work for the Revolutionary Guards as security for important figures. He attended training in Iran and [Country 1] but when he realised he would undergo further weapons training he became scared and refused to join and went into hiding and then fled Iran.
- He was born into a Muslim family and has attended church in Australia but does not believe in any religion.
- He has come to the attention of the authorities in Iran for moral offences and attended a demonstration in 2009.
- He has been seeing a psychologist in Australia for trauma caused by his boat journey to Australia and has been treated for [an] injury.
- He has tattoos and fears harm in Iran for this reason.

Refugee assessment

9. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

10. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
- the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.
11. The applicant has provided a number of identity documents from Iran that confirm his claimed identity. I am satisfied the applicant is a citizen of Iran and that Iran is the receiving country for the purpose of this assessment.

Mental and Physical Health

12. At the beginning of the applicant's protection visa interview (held on 17 April 2019), the applicant's migration agent indicated that the applicant had been seeing a psychologist as a result of trauma associated with his boat journey to Australia. The applicant then stated that he had previously attempted suicide as a result of stress associated with not having seen his mother for a number of years and having witnessed a number of people die in the water on his boat journey. The delegate then asked the applicant if there was anything that he thought would impair his ability to participate in the interview such as a medical reason or whether he was taking any medication. The applicant responded in the negative and said that he was just taking some medicine for nerve pain [due] to a workplace injury in 2018. The delegate then stated that if he felt uncomfortable he could get up and walk around during the protection visa interview. I note the applicant did not indicate that he was taking medication for his mental health issues. The applicant subsequently submitted a letter from a psychologist [dated] 18 April 2019 which stated that he had been referred by his GP in November 2018 in relation to persistent pain relating to a workplace injury and noted that in the course of his attendance he reported a history of experiencing various traumatic experiences, which in addition to his workplace injury and associated persistent pain, are having a significant effect on his overall mood and functioning. It notes his current issues have had a devastating impact on his capacity return to employment and ongoing activity. It also noted that he is continuing to attend for psychological support for his conditions. I accept that the applicant has suffered psychologically as a result of trauma associated with his boat journey to Australia and not having seen his mother and as a result of persistent [pain] and that he takes medication for his [pain]. During the protection interview the applicant and his agent did not raise any further complaints to the delegate to indicate that the applicant was struggling to effectively participate in the interview for these reasons nor did his agent make any submissions after the interview in this regard. The letter from the applicant's psychologist also did not indicate that he was taking any medication for his mental health issues nor provide any meaningful detail about his psychological symptoms and how they impacted his overall mood and functioning. I

am not satisfied that the applicant's mental or physical health issues negatively impacted his ability to provide evidence during his protection visa interview.

13. Country information that was before the delegate indicates that Iran has a well-structured healthcare system and all Iranian citizens are entitled to basic health care coverage provided by the government. Mental health services are also available.¹
14. Having considered all the evidence before me I not satisfied the applicant would be unable to access the treatment he needs for his mental and physical health issues in Iran for any reason. Although the letter from his psychologist states that his current issues have had a devastating impact on his capacity to return to employment and ongoing activity, during the protection visa interview the applicant indicated that he was currently working as a subcontractor and did not claim he would be unable to work as result of his mental and physical health issues if he were to return to Iran. I am not satisfied the applicant will face a real chance of harm in Iran from any group or person because of his physical and mental health issues, individually or cumulatively.

Work for Revolutionary Guards

15. I am not satisfied the applicant has provided a credible account for why he left Iran in his application for protection and during the protection visa interview. I found his evidence overall to be inconsistent and his timeline of claimed events also does not correspond with documents his provided to the Department and he has provided very little documentary evidence in support of his claims and is not supported by country information that was before the delegate.
16. In his application for protection the applicant claimed that his uncle was a general of the Revolutionary Guards and offered him a position in the police force to work as a Secret Service of the "VIPs". After he attended training in Iran they wanted to send him to [Country 1] for training and he thought it must be with [a terrorist group]. He refused to go and escaped and hid for a while at his grandfather's house in [City 1]. They went after him at his home and he was scared and decided to leave Iran. He claimed they are after him and he will be arrested on return and will be accused of being a counterrevolutionary person and will be subject to heavy punishment. They will also want to know about his activities in Australia as he has been living here for the past few years and is considered to have a political opinion against the Islamic establishment.
17. During the protection visa interview the applicant claimed that it was his [uncle] who offered him a job in the government to work for a special unit that guards government officials and politicians. He explained he was offered the role as he was [an occupation] and former champion [athlete]. He explained that he was eventually sent to [Country 1] for one month for training and then he was sent back to Iran for a break and to collect his things and was then told he would have to go back to [Country 1]. When the delegate pointed out that this was not what he had claimed in his application for protection, the applicant then claimed he first attended religious and theological training for approximately two months in Iran and then was sent to a camp to [Country 1] and received further religious training there for less than a month. When they returned from [Country 1] he realised that they wanted to train him with weapons for another 3 to 6 months in an unknown place and he got scared. When he told his

¹ "Healthcare in the Islamic Republic of Iran", Lex Arabiae by Meyer-Reumann and Partners, 1 January 2010, CX316432; "Who-Aims Report On Mental Health System In The Islamic Republic Of Iran", World Health Organization - Assessment Instrument for Mental Health Systems (WHO-AIMS), 1 January 2006, CIS18623; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

uncle that he did not want to go his uncle told him that “when you come to the government sector is not up to you to leave”. The fact that the applicant’s claims evolved considerably and inconsistently with his written claims over the course of the protection visa interview, particularly when challenged by the delegate, causes me to doubt the veracity of these claims.

18. When the delegate noted to the applicant that he had previously stated that he had not travelled to any other country outside Iran, he explained that it was because they had not been asked for any visas or passports when they travelled to [Country 1]. I find this explanation unconvincing particularly given his travel to [Country 1] is critical to his claims for protection and whether he travelled on a visa or a passport is irrelevant to the question of whether he had previously travelled outside of Iran.
19. During the protection visa interview the applicant claimed that, after receiving notices and letters and warnings at his home from the Revolutionary Guards, he went into hiding and first stayed at his [grandfather’s] place in [City 1] and stayed with him for three months but then the applicant fled to his [grandfather’s] house in north of [City 1] as his grandfather advised him that authorities would have his address because they know that he is his grandfather. The applicant then stayed in the second house for about 5 to 6 months and then fled to north of Iran in order to be away from the main cities and stayed there for about two or three months. He then claimed he returned to Iran and stayed with his sister and would visit his mom in secret and eventually met someone who told them about travelling to Australia.
20. It appears from the applicant’s evidence that he was in hiding until the end of 2011 and then returned to [City 2] but he did not depart Iran until June 2013 which suggests he was “hiding” at his sister’s house for approximately 18 months. I find it difficult to believe that the applicant remained in hiding in his sister’s house in [City 2] for 18 months and did not come to the adverse attention of the authorities who were allegedly seeking him out. To hide at his sister’s house in [City 2] for that long is also at odds with his decision to leave his grandfather’s initial home in [City 1] as the authorities would have his grandfather’s address.
21. I have also considered country information that was before the delegate which indicates that recruitment into the Revolutionary Guards in Iran is voluntary and, therefore, does not accord with the applicant’s claims that he was being forced to work for the Revolutionary Guards.²
22. Furthermore, the applicant’s evidence about when he got his military service exemption card and his passport is problematic. During the protection visa interview the applicant stated that his uncle offered him the job when he was around [age] years old within a year of getting his military exemption card which would have been in 2010 (as the applicant was born in [year of birth]). He subsequently stated that he obtained his passport shortly after receiving his military exemption card, therefore in approximately 2010 or 2011. However the applicant subsequently provided a copy of his military exemption card which was issued in 2013. In a submission to the IAA the applicant denied telling the delegate that he had a passport in 2011 as this would not have accorded with his age and military service requirement. I agree this narrative does not accord with the military service card he provided. I have listened to the recording of the protection visa interview carefully and I am satisfied the applicant clearly stated that he got his passport a few months after getting his military service card which would indicate he had his passport in 2011. I agree with the delegate’s finding that the applicant likely

² Immigration and Refugee Board of Canada, “IRN22249.E: Iran: Information on whether or not recruitment is voluntary in the Revolutionary Guard, and on whether politically suspect persons would be forcibly recruited in the Revolutionary Guard as a mean of controlling them”, 1 November 1995, CR0596BBF397; Ali Alfoneh, “The Basij Resistance Force: A Weak Link in the Iranian Regime?”, Washington Institute for Near East Policy, Policy Watch 1627, 5 February 2010, CX321616

obtained his passport in 2013 after receiving his military exemption card. I, nonetheless, find the applicant's problematic evidence in this regard raises further doubts about his credibility.

23. The applicant also claimed during the protection visa interview that he was being recruited by his uncle to work for the Revolutionary Guards because he was [an occupation] and had been [an athlete] and had won a lot of medals but had not been able to continue competing since 2009 due to having had operations on his knees. I note the applicant has not provided any evidence of his [athletic] career nor of the operations on his knees.
24. In the applicant's arrival interview the applicant also gave different reasons for why he left Iran. In that interview he stated that he left Iran for a better life and insecurity in Iran and had been working as a street trader and had to pay bribes and had been attacked by some drunk men on one occasion. He also had no financial support to marry his wife.
25. When the delegate pointed out this discrepancy to the applicant, he said that it was correct as that was before his uncle referred him to that government organisation. His mother had opposed his marriage and did not want to support him financially and he was looking for work in order to get married so he eventually approached his uncle. However during the arrival interview he made no mention of his uncle or the job offer with the Revolutionary Guards at all but now claims this was the reason why he left Iran.
26. During the protection visa interview the applicant also gave a different portrayal of his family background compared to that which he provided in his arrival interview. In the protection visa interview he claimed that his mother was a [professional] but had quit due to a bad back but she had many apartments in Iran that she rented out and owned store and that they were middle-class. However, during his arrival interview he claimed that his mother did not work and was a housewife but did bits and pieces in terms of employment and, as noted above, he had been working from a young age to support his family. He was living in a suburb with no security and he had been unable to complete his final school exams because he had to work and had previously been working [in a number of jobs].
27. Further, during the protection visa interview, the applicant claimed his father left his mother when she was pregnant and he had not seen his father since he was very young. However, he further claimed his father was in the army and worked for the government and all of his father's family worked for the government and, as noted above, he was able to stay with his [grandfather] in [City 1] when he went into hiding. However, during the arrival interview, when asked what his father's occupation, he merely responded that he had never seen him and that his mother used to say that his grandfather used to live in [City 1] and that was all he knew.
28. In his application for protection the applicant acknowledged that he did not refer to his current claims in his arrival interview and noted that the interpreter was "a head covered Muslim girl". During the protection visa interview he also said, when they arrived from Christmas Island, they took him from the water and a lot of people had died in the water and he was not well and he was still dizzy and could not remember anything and did not know what to say because he was scared and did not know what was going on. He was scared of the interpreter and case officer and could not trust anyone and was fearful of talking to them and was waiting to be sent back to Iran at any time. He also claimed it was military men and the navy that got them out of the water and he was afraid of all of them.
29. During his arrival interview the applicant noted that the boat he was travelling had started to sink and they were approached by a navy boat, they asked them for help but the navy men merely advised them just to follow them for most of the day and at some point people in his

boat subsequently drowned. I have accepted that the applicant is suffering from psychological trauma as a result of what he experienced on his boat journey to Australia and have taken into account the letter he has provided from his psychologist. I am also aware that arrival interviews are not for the purpose of assessing an applicant's claims for protection and the applicant had not been given any legal advice prior to this interview. The applicant claimed that he was fearful to provide the real reasons why he left Iran and could not trust the interpreter or the case officer. Although I take into account that he was distressed by the actions of the Australian Navy, he came to Australia for the purpose of seeking protection and was advised at the beginning of the arrival interview that the interview was his opportunity to provide reasons as to why he should not be removed from Australia. He was advised he was expected to give true and correct answers and if any information he provides in the future is different, then this could raise doubts about the reliability of what he said. He was also advised that the Department is careful to protect the privacy of the information he has given. The applicant further claims he could not remember anything but I note he provided a significant amount of detail about his background and travel to Australia during the arrival interview. At no time during that interview did he express distress or that he was struggling to remember information as a result of the boat journey to Australia and I note that this interview appears to have occurred approximately one month after his arrival to Christmas Island. Further, the amount of information he voluntarily gave about himself during that interview appears at odds with his claim to have been distrustful and scared of the case officer and interpreter. The letter from his psychologist did not indicate what symptoms he was displaying in respect of his psychological issues or that it had an impact on his memory. I am not convinced of the reasons the applicant has given for why he gave different reasons for leaving Iran during his arrival interview to that which he has raised his application for protection and during the protection visa interview.

30. Having considered the evidence before me, I do not accept that the applicant was a champion [athlete] or [occupation] in Iran. I do not accept that the applicant's father and his relatives worked for the Iranian government or that his [uncle] offered him a job in the Revolutionary Guards which he eventually refused and that he went into hiding out of fear of the authorities and left Iran for this reason. I also do not accept that he came from a middle-class family and I consider it more likely that the information he provided during his arrival interview was the truth in that he had been working for many years in menial work since he was young in order to support his family as the only male in the family and that he left Iran due to financial pressure and lack of security as he wished to marry did not have the financial means to do so.
31. I am not satisfied the applicant has a well-founded fear of persecution in respect of the claims discussed above.

Religion

32. During the protection visa interview the applicant claimed that he was born a Muslim but he does not believe in it. He also indicated that he had attended church in Australia as he has a lot of Australian friends who invited him there and he had read the Bible. He respects all religions but does not have a religion anymore. I accept these claims.
33. The applicant claimed that people have to show that they follow Islam in Iran otherwise they will be put in jail.
34. In its 2018 report on Iran, the Australian Department of Foreign Affairs and Trade (DFAT) noted that in practise, government policy and legislation heavily favours the majority Shi'a population, leading to pervasive structural discrimination against non-Shi'a Muslims and

religious minorities and under Iranian law, a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy but this is not an everyday occurrence in Iran and death sentences for apostasy and blasphemy are rare.³ In its 2016 report DFAT assessed that it is highly unlikely that the government would monitor religious observance by Iranians – for example, whether or not a person regularly attends mosque or participates in religious occasions such as Ashura or Muharram– and thus it would generally be unlikely that it would become known that a person was no longer faithful to Shia Islam. Perceived apostates are only likely to come to the attention of Iranian authorities through public manifestations of their new faith, attempts at proselytization, attendance at a house church or via informants. Atheists are also unlikely to come to the attention of security authorities unless they seek to publicise their views and its more recent 2018 report has not indicated a change in this assessment.⁴ Country information sources before me indicate that many Iranians do not attend mosque regularly and do not perform their daily prayers and, for this reason, not attending mosque would not necessarily arouse any suspicion.⁵ The applicant has not claimed that he came to the adverse attention of the community or authorities for not practising nor believing in Islam in Iran nor did he provide any detail as to how he pretended to follow Islam when he lived in Iran to avoid harm. I am not satisfied on the evidence that there is a real chance the applicant will promote his religious views in public in Iran and I am satisfied he will not do so due to a fear of persecution. I am not satisfied there is a real chance the applicant’s lack of belief in Islam will come to the adverse attention of the community or Iranian authorities in Iran because he will not engage in public manifestations of the Shi’a faith. I am not satisfied the applicant faces a real chance of harm in Iran from the Iranian authorities or any other group or person because of his religious views.

35. I accept the applicant has attended church in Australia with his friends but he has not claimed that he has an interest in Christianity or that he has continued to attend church regularly. I am satisfied he has attended church in Australia otherwise than for the purpose of strengthening his claims to be a refugee. I am not satisfied the applicant has an interest in converting to Christianity or that there is a real chance he will do so in the reasonable foreseeable future. I am also not satisfied on the evidence that the Iranian authorities or community in Iran are aware that he has attended church in Australia or that there is a real chance they will become aware in the reasonable foreseeable future. I am not satisfied the applicant faces a real chance of harm in Iran from the Iranian authorities or any other group or person because he has attended church in Australia.

Tattoos

36. During the protection visa interview the applicant indicated that he had tattoos on his body which he had done in Australia in 2015 which are of [details deleted]. He claimed he is scared as he cannot work anywhere in Iran because of his tattoos and because of his past problems in the past and is afraid “they” will burn his tattoos as they believe it is anti-Islamic. It his lifestyle and he cannot change it because he does not want to be what they want him to be.

³ DFAT, “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226

⁴ DFAT, “DFAT Country Information Report Iran April 2016”, 21 April 2016, CIS38A8012677

⁵ Danish Immigration Service, “Update on the Situation for Christian Converts in Iran”, June 2014, CIS28931; Gunes Murat Tezcur; Taghi Azadarmaki; Mehri Bahar, “Religious Participation among Muslims: Iranian Exceptionalism”, Critique: Critical Middle Eastern Studies, 1 January 2006, CIS21784; “The Iranian Revolution at 30”, The Middle East Institute, 1 January 2009, CIS17095; Austrian Centre for Country of Origin and Asylum research and Documentation (ACCORD), “Iran: Freedom of Religion; Treatment of Religious and Ethnic Minorities COI Compilation September 2015”, 1 September 2015, CISEC96CF13622; Iran: Treatment of atheists by State and non-State actors, Austrian Centre for Country of Origin and Asylum Research and Documentation, 12 June 2017, CISED50AD4616

37. Country information before me indicates that, although the Iranian government denounces tattoos as it is considered “western” or “immoral”, tattoos in Iran are increasingly common. In 2016, DFAT noted that is unaware of any recent, specific report of people being targeted by security forces solely for having a tattoo but it is possible that a person with a visible tattoo could come to the attention of security forces and result in low-level harassment which will likely result in a warning or fine. DFAT believes it unlikely that authorities would maintain an interest in someone who had previously come to their attention for having a tattoo, unless the tattoo gave evidence of another crime.⁶ In 2018 DFAT noted that, where there have been incidents of harassment of men for violating the dress code (including tattoos), it is likely to have been the result of either over-zealous enforcement by individual security authorities in particular locations (particularly outside of major cities), or because the individual has come to the attention of authorities for separate activities.⁷ Having considered the country information before me I am also not satisfied there is a real chance applicant will be unable to find any work in Iran because of his tattoos.
38. The above country information indicates that, if the applicant were to come to the attention of the authorities because of his tattoos, there is a real chance he may be subject to a fine or warning which I do not consider to, individually or cumulatively, amount to serious harm. I am not satisfied the applicant will face a real chance of serious harm in Iran from the Iranian authorities or any other group or person as a result of his tattoos.

Moral Offences and Protest Activities

39. In his application for protection the applicant also claimed that he had been detained and beaten by the police while he was out with his girlfriend on the street or part of a protest and sustained physical injuries.
40. During the protection visa interview the applicant claimed that, when he was about [age] or [age] years old, he had a girlfriend and was walking in the park when the police came and asked about their relationship and a few times he was taken and once they broke his hand. The last time he was arrested was before getting his military service card.
41. During the applicant’s arrival interview he also claimed that on one occasion he was out with his fiancée when he was stopped by the authorities who asked his fiancée to cover her hair. An officer went to touch his fiancée and the applicant told him to stop as he had no right to do that. The officer then asked the applicant to hold up his hands and, when he did, the applicant’s stomach showed and the officer told him that he had a problem with the way the applicant dressed. He then insulted the applicant and his fiancée and the applicant could not control himself and pushed the officer away and told him he had no right to say such things. He was then taken to the Basij station and they called his father-in-law to come and he and his fiancée were made to write a guarantee not to be out on the street with such clothing anymore.
42. DFAT and other sources have stated that there can be occasional morality campaigns in Iran to enforce standards of Islamic conduct in which some elements of the security forces are involved. Authorities can take a heavy-handed approach when they periodically enforce standards of Islamic conduct in the community, including Islamic dress and public displays of affection with non-family members of the opposite sex. Youth in particular can experience

⁶ “Working underground: the life of an Iranian tattoo artist”, France 24 International News, 1 July 2013, CIS26056; DFAT, “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226; DFAT, “DFAT Country Information Report Iran April 2016”, 21 April 2016, CIS38A8012677

⁷ DFAT, “DFAT Country Information Report – Iran”, 7 June 2018, CIS7B839411226

some form of low-level harassment from security authorities, such as being subjected to searches, car checks and verbal warnings for dress or behaviour. Enforcement can be unpredictable and related to the prevailing political atmosphere of the time.⁸

43. There is some variance in the applicant's evidence about his encounters with the Iranian authorities for moral offences between his interviews and application for protection. I have given consideration to the amount of detail the applicant provided during his arrival interview when describing the above incident. I have given this description more weight compared to the very general information he provided in his application for protection and during his protection visa interview about the other alleged incidents and have also given weight to my overall concerns with his credibility and that he has exaggerated and changed his claims in general throughout his protection visa interview. Given this, I accept the alleged incident that the applicant described in his arrival interview above occurred. It is also plausible that the applicant and his fiancée were also stopped on other occasions and questioned about their relationship but I do not accept that the applicant had been detained or physically injured on these other occasions. On the evidence before me I am not satisfied the applicant remained of adverse interest to the Iranian authorities as a result of these incidents nor that they were related. I am not satisfied the applicant will face a real chance of harm from the Iranian authorities or any other group or person as a result of these incidents, individually or cumulatively.
44. Even if the applicant were to be subject to low-level harassment again in Iran, as a young person due to his public dress or behaviour or in combination with his tattoos, I am not satisfied that being subject to searches, fines, car checks, warnings, questioning, signing guarantees and short periods of detention, amount to serious harm, individually or cumulatively nor am I satisfied there is a real chance he will be subject to any other penalty for these issues or in combination with his previous encounters with the authorities for moral offences.
45. During the applicant's arrival interview he also claimed that he had taken part in a demonstration 2009 against the government because of price hikes and style of life. His application for protection seems to indicate that he was detained as a result of taking part in a protest but I note that he did not repeat this claim during the protection visa interview nor did he mention this in his arrival interview. On the evidence before me, I accept that he has participated in protest in 2009 against the Iranian government but I am not satisfied he was detained as result or that he was ever adverse interest to the Iranian authorities for this reason. When asked by the delegate if he had been politically active in Australia, the applicant claimed that he was too scared. The applicant has given evidence that he only attended one demonstration against the Iranian government in 2009 which is not indicative of someone who is generally politically outspoken. Although I am willing to accept the applicant may have a political opinion against the Iranian government I am not satisfied that he will promote or publicly voice that political opinion if he were to return to Iran and I am not satisfied that will be due to a fear of persecution. I am not satisfied the applicant faces a real chance of harm in Iran from any group or person as a result of having attended a protest in 2009 or his political opinion.

Failed asylum seeker from a western country

⁸ DFAT, "DFAT Country Information Report Iran April 2016", 21 April 2016, CIS38A8012677; "Springtime In Iran Means The 'Morality Police' Are Out In Force", National Public Radio, 3 May 2016, CX6A26A6E3606; "When Freedom Is the Right to Stay Under Wraps", The New York Times, 7 May 2014, CX320856; "This app will help you avoid Iran's morality police", The Verge, 12 February 2016, CX6A26A6E1197; ACCORD, "Iran: Women, children, LGBTI persons, persons with disabilities, 'moral crimes': COI Compilation", 1 December 2015, CISEC96CF14191

46. Although not raised by the applicant the delegate also assessed whether he would be harmed in Iran as a failed asylum seeker from a western country.
47. The applicant has claimed that he departed Iran on his own genuine passport which was then lost on the boat trip to Australia. I accept these claims.
48. Country information indicates that Iranian overseas missions will not issue travel documents to an Iranian whom a foreign government wishes to return involuntarily to Iran.⁹ In its 2018 report, DFAT indicated that it reached an agreement with the Iranian government to facilitate the return of Iranians who arrived after 19 March 2018,¹⁰ however the applicant does not fall within this category. If the applicant were to return to Iran, I am satisfied it would only be on a voluntary basis.
49. Country information before me indicates that it is not a criminal offence in Iran for any Iranian to ask for asylum in another country and Iranian authorities have little interest in prosecuting failed asylum seekers for activities conducted outside Iran, including in relation to protection claims.¹¹ In its 2018 report, DFAT stated that, according to international observers, Iranian authorities pay little attention to failed asylum seekers on their return to Iran. In cases where an Iranian diplomatic mission has issued temporary travel documents, authorities will be forewarned of the person's imminent return. Authorities will usually question them on return only if they have already come to official attention, such as by committing a crime in Iran before departing.¹²
50. There are few very recent reports before me that allege mistreatment of failed asylum seekers on return to Iran. There are two 2017 articles which refers to the sentencing to prison of an asylum seeker on return to Iran but it notes that he had been arrested for an offence prior to his departure from Iran and was related to a political activist with little other detail about the case provided. A 2015 article by the Guardian refers to the return of two Iranian asylum seekers from Papua New Guinea who, after return, were forced to surrender their documents and were told to report to police though no further details about their circumstances were provided. Other recent articles refer to the arrest of returning political activists, artists, PHD students, and journalists or those who had been previously convicted of an offence and fled the country. I am not satisfied the applicant has a profile such that there is a real chance he will attract the adverse attention of the Iranian authorities on his return for any reason, including his tattoos and previous encounters with the authorities for moral offences. I am also not satisfied, on the information before me, that the Iranian authorities impute failed asylum seekers from western countries with a political opinion against the Iranian government.
51. I am not satisfied the applicant will face a real chance of harm from the Iranian authorities or any other group or person due to being a failed asylum seeker from a western country.

⁹ Danish Immigration Service, "Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, ID Cards, Summons and Reporting, etc.", 1 April 2009, CIS17329; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

¹⁰ DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

¹¹ Danish Refugee Council, Landinfo and Danish Immigration Service, "Iran: On Conversion to Christianity, Issues concerning Kurds and Post-2009 Election Protestors as well as Legal Issues and Exit Procedures", 1 February 2013, CIS25114; DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

¹² DFAT, "DFAT Country Information Report – Iran", 7 June 2018, CIS7B839411226

Refugee: conclusion

52. The applicant does not meet the requirements of the definition of refugee in s.5H(1). The applicant does not meet s.36(2)(a).

Complementary protection assessment

53. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

54. Under s.36(2A), a person will suffer 'significant harm' if:

- the person will be arbitrarily deprived of his or her life
- the death penalty will be carried out on the person
- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

55. I have not accepted the applicant's claim in regards to being offered a job with the Revolutionary Guards as a security guard and refusing to attend further weapons training and then going into hiding and leaving Iran out of fear for this reason. I am not satisfied the applicant will face a real risk of significant harm in Iran for these reasons.

56. For reasons already stated I am not satisfied the applicant will face a real chance of harm in Iran from any group or person as a failed asylum seeker from a western country, because he participated in a demonstration in 2009, his political and religious opinion, due to previous encounters with the authorities for moral offences, having attended church in Australia or because of his mental and physical health issues. As real chance equals real risk¹³ I am also not satisfied the applicant will face a real risk of significant harm in Iran from any group or person for these reasons.

57. I have accepted that the applicant has tattoos which he obtained in Australia. The country information before me indicates that if he were come to the attention of the Iranian authorities because of his tattoos he may be subject to a warning or fine but the authorities do not maintain an interest in such people. I do not consider a warning or fine, individually or cumulatively, amounts to significant harm as I am not satisfied it amounts to the arbitrary deprivation of his life, torture, the death penalty or reaches the requisite level of cruel or inhuman or degrading treatment or punishment as defined in s5(1) of the Act. I have also not accepted that there is a real risk the applicant will be unable to find any work in Iran because of his tattoos. I am not satisfied the applicant will face a real risk of significant harm in Iran from the Iranian authorities or any other group or person because of his tattoos.

¹³ *MIAC v SZQRB* (2013) 210 FCR 505.

58. Even if the applicant were to be subject to low-level harassment from the Iranian authorities as a young person due to his public dress or behaviour or in combination with his tattoos, I am not satisfied the harassment such as searches, car checks and verbal warnings, a fine, questioning, signing guarantees and short periods of detention will amount to significant harm, individually or cumulatively as it will not involve the arbitrary deprivation of his life, the death penalty, torture or reach the requisite level of cruel or inhuman or degrading treatment or punishment. Nor am I satisfied there is a real risk he will be subject to any other penalty including in combination with his previous history of encounters with the Iranian authorities for moral offences.

Complementary protection: conclusion

59. There are not substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant does not meet s.36(2)(aa).

Decision

The IAA affirms the decision not to grant the referred applicant a protection visa.

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature; but does not include an act or omission:
 - (c) that is not inconsistent with Article 7 of the Covenant; or
 - (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant; but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.